IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.46 OF 2005

Dey's Medical Store Pvt. Ltd. ... Petitioner

Vs.

Gopichand Udharam Chandiramani ... Respondent

Mr. N. Dinkar Rao for the petitioner.

Mr. P.K. Dhakephalkar with Mr. N.P. Shimpi for the respondent.

CORAM: SMT. RANJANA DESAI, J.

DATED: 9TH MARCH, 2005.

P.C.:-

1. The petitioner is the original defendant. It is a company incorporated under the Indian Companies Act. The respondent/plaintiff filed a suit on the ground of bonafide requirement. The case of the plaintiff is that the suit property belonged to his mother Gombai @ Prabhatibai Chandiramani, who bequeathed all the moveable and immoveable properties to her five children which include the plaintiff and the late husband of Asha Chandiramani. Asha Chandiramani's husband expired on 10/8/1990. The basic case of the plaintiff is that Hongkong having been taken over by the Chinese Government, Asha Chandiramani wants to come back to India and stay in the suit premises which belong to the plaintiff and her husband. Asha Chandiramani has stepped in the witness box and deposed about her requirement. It

is the case of Asha Chandiramani that she is staying in Hongkong with her son, who is married and who has one child; that she does not have any accommodation of her own in Hongkong or Bombay or anywhere else. According to her, she does not have any income; she is not financially sound and, hence, not in a position to acquire any premises in Bombay. According to her, the suit premises are situated at "A" Road, Churchgate, Mumbai - 400 020 and she has many relatives at "A" Road, Churchgate. Some of the relatives also stay at "C" Road and "D" Road and, therefore, the suit premises are very convenient for her. The trial court dismissed the suit. An appeal was carried by the plaintiff. The lower appellate court allowed the appeal and decreed the suit.

Hence, this writ petition.

2. I have heard, at some length, Mr. Rao, the learned counsel for the petitioner and Mr. Dhakephalkar, the learned counsel for the respondent. Mr. Rao, the learned counsel for the petitioner contended that the suit filed by the plaintiff is bad in law as it ought to have been filed by all the co-owners. I am unable to agree with the learned counsel. It is pertinent to note that though the trial court dismissed the suit, it has held that the suit is not bad for want of necessary parties. It has held that the plaintiff has proved that he is the landlord of the defendant in respect of the suit premises. A co-owner can always file the suit on behalf of another co-owner. I find no merit in this

submission and, therefore, this submission must be rejected.

3. Relying on the judgment of the Supreme Court in **T. Sivasubramaniam and others v. Kasinath Pujari and others, AIR 1999 SC 3190**, the learned counsel for the petitioner contended that a mere desire of the landlord is not sufficient. It is not a substitute for the need and in the instant case apart from stating that because Hongkong has been taken over by Chinese Government, she wants to come back to India, Asha Chandiramani has not given any other reason. Factually, the learned counsel is wrong. In her evidence, Asha Chandiramani has stated that she does not own any premises either in Hongkong or in India. In Hongkong, she stays with her son. In India, near the suit premises, her relatives reside. Her need appears to be genuine, bonafide and not a mere whim or fancy. In this connection, I may usefully refer to the judgment of the Supreme Court in **Meenal Eknath Kshirsagar v. Traders & Agencies and another, 1997(1) Mh.L.J. 121,** where the Supreme Court has held that it is the landlord who is the best judge of his requirement. Viewed in the light of this judgment, in my opinion, the submission of Mr. Rao, the learned counsel for the petitioner, must fail.

4. In view of the above, in my opinion, there is no substance in the petition. It also needs to be mentioned that though the trial court has dismissed the plaintiff's

suit, the trial court has held that the hardship factor tilts in favour of the plaintiff and that has been confirmed by the lower appellate court. In view of this, the petition deserves to be rejected.

5. At this stage Mr. Rao, the learned counsel for the defendant states that some time may be given to the defendant to approach the Supreme Court. In the facts and circumstances of the case, eight weeks' time is granted to the defendant to approach the Supreme Court. For a period of eight weeks, the impugned decree shall not be executed. However, the petitioner/defendant shall file an undertaking in this court that during the said period, the petitioner/defendant shall not sell, assign, transfer, alienate, encumber the suit premises or create any third party rights or induct any one in the suit premises and, on expiry of eight weeks, if the petitioner/defendant is unable to get any favourable order from the Supreme Court, the petitioner/defendant shall handover, quiet, vacant and peaceful possession of the suit premises to the plaintiff.

(SMT. RANJANA DESAI, J.)